**FILED**

**MAY 18 2006**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>    Plaintiff-Appellee,<br><br>v.<br><br>JOSE ELISANDO MONGUIA,<br><br>    Defendant-Appellant. | No. 04-10479<br><br>D.C. No. CR-03-00210-1-PJH<br><br>MEMORANDUM [*] |

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted May 15, 2006 [**]

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

   Jose Monguia appeals his 70-month sentence imposed following his guilty

plea to being found in the United States after illegal re-entry, in violation of

---

   [*]    This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

   [**]    This panel unanimously finds this case suitable for decision without
oral argument.  *See* Fed. R. App. P. 34(a)(2).

04-10479

8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we remand.

Monguia contends that the district court violated his Sixth Amendment rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1079 & n.16 (9th Cir. 2005), *cert. denied*, No. 05-8847, 2006 WL 219971 (U.S. May 1, 2006).

As to Monguia's contention that the case should be remanded for re-sentencing, because Monguia was sentenced under the then-mandatory U.S. Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the district court to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

**REMANDED.**